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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X  
JOHN KOGUT, :  
Plaintiff, : CV 06 6695  
-against- : U.S. Courthouse  
COUNTY OF NASSAU, et al, : Central Islip, N.Y.  
Defendants. : TRANSCRIPT OF PROCEEDINGS

: October 31, 2012  
- - - - - X 10:10 a.m.  
- - - - - X

JOHN RESTIVO, :  
Plaintiff, :  
-against- :  
NASSAU COUNTY, et al, :  
Defendants. :

- - - - - X

BEFORE:

HONORABLE JOANNA SEYBERT, U.S.D.J.

Court Reporter: HARRY RAPAPORT, CSR  
United States District Court  
100 Federal Plaza  
Central Islip, New York 11722  
(631) 712-6105

Proceedings recorded by mechanical stenography.  
Transcript produced by computer-assisted transcription.

HARRY RAPAPORT, CERTIFIED REALTIME REPORTER  
OFFICIAL COURT REPORTER

APPEARANCES:

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NADJIA LIMANI, ESQ.

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M O R N I N G        S E S S I O N

(Whereupon, the following takes place in the absence of the jury.)

THE COURT: Good morning.

I see everyone is here nice and dry.

I did attempt to contact counsel to advise them that it wouldn't be necessary to come in today but to come in tomorrow, but not all cell phones and email were working.

I do apologize, and maybe we can accomplish something since I know some of you made a rather long trip, Mr. Freeman and Ms. Limani.

So, you want off until Monday; and in as much as I think it is a grand idea, I'm not inclined to grant that lengthy of an adjournment.

A lot of this is a gamble, as Mr. Baran pointed out, in that we don't know what the status of the jurors are. Charley had been in contact with them up until this Monday.

Charley?

THE CLERK: Yesterday.

THE COURT: And you were able to get a hold of all of them?

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1 THE CLERK: Except one.

2 THE COURT: And, and we can get them in tomorrow  
3 is my expectation.

4 What is the status of the witnesses?

5 There were motions to preclude Mr. French from  
6 testifying.

7 MS. LIMANI: We have two witnesses scheduled for  
8 tomorrow morning. He was the order before Sandy.

9 They are two judges.

10 THE COURT: McCarthy?

11 MS. LIMANI: McCarthy and Peck.

12 MR. FERGUSON: McCarty.

13 MS. LIMANI: Then ADA Peck.

14 They cleared their calendars.

15 THE COURT: They don't have much of calendars as  
16 I recall.

17 MS. LIMANI: That is what I was told.

18 Our plan today, if the Court feels the jury will  
19 be here tomorrow we will make every effort to get them  
20 here.

21 We have to get in touch with people. But we do  
22 have witnesses who are willing to come in. It may not be  
23 a full day, but we can do our best to make sure that it  
24 is.

25 THE COURT: Okay.

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1 MS. LIMANI: We have provided counsel last night  
2 with some clips of Detective Serianni's testimony with the  
3 option of playing video.

4 THE COURT: How long is it?

5 MS. LIMANI: Not long. Three clips, maybe an  
6 hour.

7 THE COURT: What about Volpe? Any clips from  
8 him?

9 MS. LIMANI: Some sections we may be reading and  
10 there may be two clips.

11 THE COURT: How long do you think that would be?

12 MS. LIMANI: Not sure at the moment. We are  
13 trying to figure it out.

14 THE COURT: But Serianni is a half an hour?

15 MS. LIMANI: An hour.

16 THE COURT: All right.

17 MR. FREEMAN: Dr. Bloom was available this  
18 morning. And the doctor anticipated autopsies that need  
19 to be done with respect to the storm. I do believe we can  
20 get her here tomorrow if we are to go forward.

21 I know this is not the point you are addressing.  
22 And I think it is fair to mention this now, that if we get  
23 all these people ready for tomorrow, and then we can't go  
24 forward because of the jury, I think it will impact on our  
25 ability to get these people --

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1 THE COURT: Back another time?

2 MR. FREEMAN: Yes.

3 I'm not saying anything --

4 THE COURT: I wish I had better definitive news.  
5 But the point is that Charley was able to get in touch  
6 with nine of the ten --

7 MR. FREEMAN: I believe we have a new number now  
8 for ten of ten.

9 THE COURT: Have you spoken with ten of ten?

10 THE CLERK: She reported today and was told to  
11 come back tomorrow unless otherwise advised.

12 THE COURT: So, we have the ten advised to be in  
13 here tomorrow; is that correct, Charley?

14 THE CLERK: The most I spoke to directly. A few  
15 I left messages.

16 THE COURT: Okay.

17 Perhaps what we can do in the next hour or two  
18 is to leave messages for them. They can't call in here,  
19 our numbers are not working.

20 MS. LIMANI: I know. We tried.

21 THE COURT: Sorry.

22 MR. FREEMAN: And although this is -- I  
23 understand a lot of the people in this courtroom and the  
24 ones who live near the courthouse don't have power. But I  
25 know that some members --

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1 THE COURT: The vast majority of people don't  
2 have power on Long Island.

3 MR. SCHECK: I know.

4 To the extent that this matters, it is probably  
5 low on everybody's list, but if we start tomorrow and we  
6 are thinking of staying out near the courthouse as we have  
7 been doing, and the hotels do not have power.

8 THE COURT: The hotels don't have power? They  
9 shouldn't be charging you a full rate if they don't have  
10 power.

11 MR. FREEMAN: The way we were able to get here  
12 today. We rented a car.

13 THE COURT: Were you able to get through the  
14 tunnels?

15 MR. FREEMAN: I went over the top of Manhattan  
16 and across the Throgs Neck Bridge. The tunnels are -- the  
17 only tunnel that is operational is the Lincoln Tunnel, and  
18 that wouldn't help me. We came a different way, but we  
19 made it.

20 THE COURT: How long did it take you to get in?

21 MR. SCHECK: An hour and a half, an hour and 45  
22 minutes.

23 THE COURT: All right.

24 And have we heard from Mr. Scheck and  
25 Ms. Cornwall?

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1 MR. GRANDINETTE: Yes, Judge.

2 On behalf of all the plaintiffs' counsel,  
3 everyone is in the same boat. Flooded, no power, no  
4 internet problems. Mr. Casteleiro is in Rockland County  
5 with difficulties as well.

6 We would ask the Court to consider -- I  
7 understand wanting to move forward. And we are afraid of  
8 loosing jurors and delays as well.

9 I might ask on behalf of plaintiff's counsel for  
10 Friday rather than Thursday, and have a little more  
11 certainty. We are trying desperately to secure some hotel  
12 rooms with power. I tried for two days straight.

13 THE COURT: Do you have power in your house?

14 MR. GRANDINETTE: I don't have power.

15 Unfortunately, we are kicking into daylight  
16 savings time so it will be dark very early at 5:00  
17 o'clock.

18 Notwithstanding, we can get by certainly. But  
19 it may be more practical if we had an extra twenty-four  
20 hours. And I don't know if you agree to start Friday and  
21 give everybody a little more time.

22 THE COURT: They have their witnesses lined up,  
23 and I would like to get the witnesses done.

24 Who would be cross-examining McCarty?

25 MR. GRANDINETTE: We are not sure, Judge. None



1 of the witnesses were on the projected witness list for  
2 this start.

3 THE COURT: That was Monday. Tomorrow is  
4 Thursday.

5 MR. GRANDINETTE: We will be able to work  
6 through all that.

7 THE COURT: Let's do it this way.

8 You are in touch with Mr. Scheck?

9 MR. GRANDINETTE: Yes.

10 THE COURT: And you or he are in touch with  
11 Ms. Cornwall?

12 MR. GRANDINETTE: Yes.

13 THE COURT: And Mr. Casteleiro?

14 MR. GRANDINETTE: Yes, and we have a dial  
15 number, perhaps we can get a one eight hundred number.

16 THE COURT: Yes.

17 MR. FREEMAN: As I said before, if we have  
18 witnesses slotted for certain days and then we cancel  
19 them, it would be harder.

20 So, I'm not saying that we are insisting to go  
21 forward tomorrow or Friday or Monday. I leave it for the  
22 Court's discretion.

23 THE COURT: You have two live witnesses.

24 MR. FREEMAN: Our main fear is we mobilize for  
25 tomorrow and we don't have all the jurors. And I think

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1 none of us want to go forward with a lesser complement  
2 than we have now because that could lead to being at the  
3 cusp of the six eventually; and I fear that in this case.

4 I just didn't want you to think we were  
5 insisting on going forward tomorrow. It is in your  
6 discretion. Mr. Grandinette said it, and we are in the  
7 same boat. I'm not sure -- I didn't know whether to be  
8 here today or not be here today. I felt that without  
9 being excused we had to be here today.

10 THE COURT: I apologize. We did try to get out  
11 the emails.

12 MR. FREEMAN: That is not my point. No  
13 criticisms.

14 I'm glad Mr. Grandinette is here. Some of them  
15 took an opposite position.

16 I don't know what to do. And I know you get to  
17 sit higher than me and wear robes, and I hope you make a  
18 wise decision. But I didn't want you to think that we are  
19 insisting on going forward.

20 THE COURT: Yes, Mr. Ferguson.

21 MR. FERGUSON: One thing that might impact the  
22 availability of jurors for tomorrow, is I know that I have  
23 a witness scheduled for tomorrow, and he told me he can't  
24 get gas. He lives in Lynbrook. But there are huge  
25 problems with not only loss of power, but there are huge

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1 problems with people not being able to get gas. So we  
2 don't know if all these jurors will have gas to get here.

3 THE COURT: What Mr. Baran will do is take a  
4 couple of hours to see if he can get contact with the  
5 jurors now. If we get assurances from all ten jurors that  
6 they will be here, fine. It varies.

7 There are certain people in Lynbrook that can't  
8 get gas. You have to wait an hour on line in Rockville  
9 Center. Yesterday I spent two hours trying to get gas.  
10 You have to wait a considerable amount of time.

11 Further out east on Long Island is all the gas  
12 you want. All the stations are open and everybody has  
13 power. And that is even on the south shore. So it varies  
14 from location to location.

15 We can contact the jurors now. They are pretty  
16 much in western Suffolk, Charley, and Nassau? And we have  
17 some in Queens.

18 MR. GRANDINETTE: One in Queens.

19 THE CLERK: One in Brooklyn.

20 THE COURT: One in Brooklyn and one in Queens.

21 MR. GRANDINETTE: One of my big fears, and I  
22 don't know about everybody else, when I drove across the  
23 Island there are no traffic signals.

24 THE COURT: There are in some spots. It all  
25 depends.

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1 I drove from Western Nassau out to Eastern  
2 Suffolk and there are pockets. It is very spotty.  
3 Probably the safest thing is to cancel for the rest of the  
4 week and come in on Monday, but I don't think we have that  
5 much time to do that. And I think you have to make a  
6 reasonable decision. Charley will try to get a hold of  
7 everyone he can get a hold of.

8 Ask your witnesses to hold off. I don't know  
9 that McCarty and Peck are doing that much business, and  
10 unless they are in the arraignment business. And one is  
11 in surrogates now, and in good times they work with half  
12 the staff.

13 That is where we are on that.

14 Give us about two hours, we will see who we can  
15 contact. If we contact all ten of them, do the best you  
16 can.

17 Your witness is in Lynbrook, and he should go  
18 further east and get on a gas line.

19 MR. FERGUSON: He is one small witness, and I  
20 brought it up for everybody.

21 THE COURT: Do you have gas in your car,  
22 Mr. Ferguson?

23 MR. FERGUSON: I got gas from the Eisenhower  
24 Park, the county.

25 THE COURT: It must be good.

1 MR. FERGUSON: I think it is the only perk in  
2 that job in the last five years.

3 THE COURT: Times have changed. I didn't even  
4 get a token.

5 MR. FERGUSON: I have a witness who is a  
6 building manager of a building, the United Cerebral Palsy  
7 in the city. He is a witness. And he is telling us the  
8 city is using the building as a shelter. They need him to  
9 be there. He is stuck in the city in a building being  
10 used as a shelter.

11 THE COURT: He is not coming out until next  
12 week.

13 We will see where the jury is at. It looks like  
14 we will have enough witness between McCarty, and Peck, and  
15 Serianni, and hopefully Dr. Bloom. What is her status  
16 now?

17 MR. FREEMAN: She was going to have some trouble  
18 getting here this morning. And I believe she would make  
19 it -- well, now we are not sitting today. But she should  
20 be able to make it tomorrow at some point.

21 THE COURT: How long do you expect her to be?

22 MR. FREEMAN: On direct maybe a half an hour.  
23 And I imagine cross would be equal or less. She will just  
24 be following pretty much what she testified to previously.

25 THE COURT: Okay.

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1 Do you know who is cross-examining her?

2 MR. GRANDINETTE: I'm not sure whether I am or  
3 Mr. Casteleiro is yet.

4 THE COURT: You folks can figure it out, and we  
5 will get in touch with the jurors right now.

6 Is the cafeteria open?

7 THE CLERK: Yes, it is.

8 THE COURT: All right, I will be back.

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10 (Whereupon, a recess was taken.)

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1 (The following takes place at 1:55 p.m.)

2 THE COURT: We cannot get all ten jurors here  
3 with any assurance. At least one remains a real distant  
4 gamble, because that person is in Long Beach, and they  
5 have not communicated with Mr. Baran.

6 Chances are if they have a cell phone they have  
7 not been able to charge it, unless they are riding around  
8 in the car if the car has gas. So that is not going to  
9 happen.

10 In addition, there is one juror who is concerned  
11 about a child that probably won't have school tomorrow.  
12 And can make some arrangements and that also is a push.

13 Based on all that we are going to hope for  
14 Friday.

15 Can you get folks in here on Friday?

16 I don't think anything is going to change with  
17 Judge McCarty and Peck.

18 MS. LIMANI: We will contact them.

19 THE COURT: If you lose one or two jurors now is  
20 way too risky.

21 MS. LIMANI: We just made arrangements and are  
22 in the process of confirming them and we will switch it.  
23 If Peck and McCarty are not available we will bring them  
24 in next week.

25 THE COURT: We will do the best we can then.

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1 I wanted to rule on the applications. So let me  
2 accomplish that today.

3 With respect to John French there was a lengthy  
4 opposition to calling him again.

5 I have decided that he may be permitted to  
6 testify and straighten out what appears to be confusion  
7 with regard to the photograph.

8 As far as Debra Smith, there is a motion to ban  
9 her. And I believe you responded to that and made a  
10 different application than previously.

11 I don't see any reason to ban her. Whatever her  
12 mental state was in 1985, I can't make a definitive  
13 statement without seeing what she is like today.

14 I know she had been hospitalized, and there are  
15 certain issues. But she is involved with work police put  
16 into it, and she can come in to testify.

17 That is my ruling. You have an exception.

18 MR. GRANDINETTE: Judge, it will take us  
19 literally, under five minutes, if you put her on the  
20 witness stand outside of the jury's hearing and just  
21 inquire. That's all I'm asking you to do. I think it will  
22 become crystal clear within five minutes.

23 THE COURT: If she is not competent to testify  
24 it will be crystal clear before the jury one way or the  
25 other and they can be told to disregard it.



1 MR. GRANDINETTE: Judge, at that point in  
2 time -- please note my exception.

3 THE COURT: And Ms. Kruse, she has what I  
4 consider to be relevant testimony in terms of her  
5 relationship with Kogut and Halstead. I will let her  
6 testify.

7 The name for Kim Beyers, B-E-Y-E-R-S, Kruse,  
8 K-R-U-S-E, and Regina Fuhrman, F-U-R-H-R-M-A-N,  
9 Nezmoudeen, and she is not going to be testifying about  
10 the disappearance. But she does appear to have some  
11 indication of an association with Mr. Halstead and  
12 Mr. Kogut. And upon information and belief, I assume this  
13 is as a result of interviewing this witness, the  
14 defendants maintain that Regina Nezmoudeen indicates she  
15 was 14 years old in 1984, and turning 15 at the end of the  
16 year, and was in Dennis Halstead's apartment with Dennis  
17 Halstead and John Kogut, and she dated John Kogut for a  
18 short period of time in 1984.

19 This appears to be relevant testimony and will  
20 rebut any presumption of fabrication of evidence with  
21 regard to John Kogut's confession, and also to proof with  
22 respect to malice.

23 Retired detective Anthony Kosier. There is some  
24 limitation here with the polygraph. He is not going to  
25 testify about polygraph, so what is he going to testify

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1 to, Mr. Freeman?

2 MR. FREEMAN: He is going to testify to  
3 admissions made during the pre-test after warnings.

4 THE COURT: And what were those statements by  
5 Mr. Restivo?

6 MR. FREEMAN: Your Honor, I don't want to  
7 misstate. I'm waiting for a copy.

8 MS. LIMANI: It is number five here.

9 (Handed to the Court.)

10 MR. FREEMAN: So the Court is clear, we are not  
11 seeking to introduce every part of what was said. Only  
12 that Restivo said to Kosiar, K-O-S-I-A-R, that Mr. Kogut  
13 is the kind of person that could or would do this. You  
14 have my copy, but it is very close to what I just said.

15 THE COURT: He said he knows he has a fetish of  
16 some sort about child porn.

17 MR. FREEMAN: We are not seeking to introduce  
18 that. Just the phrase --

19 THE COURT: Kogut is the type of guy who could  
20 kill Fusco?

21 MR. FREEMAN: It can go to lack of malice --

22 THE COURT: Was it the portion that deals with  
23 the portion that says Kogut would not make any admissions?  
24 That would come in, too.

25 MR. FREEMAN: Yes.

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1 THE COURT: And that is the only portion of this  
2 you would seek to have admitted?

3 MR. FREEMAN: Yes.

4 And also, earlier there had been litigation  
5 about the use of polygraph pre-test. And when your Honor  
6 ruled that there would be no reference to polygraph other  
7 than the limited discussion that plaintiffs and  
8 defendants' counsel agreed to, than Mr. Kogut was told  
9 that you failed. But there would be nothing else about  
10 results or any other information, that I believe implicit  
11 does it, if not explicit in your ruling, that the  
12 questions in the pre-test could be used, under the  
13 subjection of 404 and 403. But we are seeking to admit  
14 just that portion for the reasons that I stated, through  
15 Kosier not identifying, or suggesting it had anything to  
16 do with a polygraph. Just that when he was at homicide he  
17 made this statement after warnings to a detective.

18 THE COURT: Now, this statement was not elicited  
19 at Mr. Kogut's criminal trial, or Mr. Restivo's or  
20 Halstead's trial; is that correct?

21 MR. FREEMAN: I believe Mr. Kosier testified in  
22 Mr. Restivo's trial, and I would have to check.

23 THE COURT: Was it also --

24 MR. FREEMAN: In the contention interrogatories,  
25 yes.

1 MR. GRANDINETTE: I understand that Kosier's  
2 testimony was not in the trial.

3 The state of mind of John Restivo in his opinion  
4 is clearly not relevant to a finding of fact, and cannot  
5 form a basis of probable cause to question John Kogut or  
6 arrest John Kogut.

7 Clearly, Detective Volpe admitted as such, and  
8 that when he asked John Kogut to come in he wasn't a  
9 suspect. It wasn't in dispute on March 21st, or March  
10 25th. He just asked him to come down.

11 On the other hand, it is extremely prejudicial  
12 to permit Kosier to come in and give an opinion statement  
13 of John Restivo, which Restivo had already, I believe,  
14 denied making, that Mr. Kogut is capable of killing  
15 someone.

16 That is the exact kind of opinion testimony that  
17 would be precluded under the Federal Rules of evidence,  
18 and it should be in this case, irrespective of whether or  
19 not there was a call, that John Kogut didn't make any  
20 admissions to Mr. Restivo. It just gives it more factual  
21 basis to preclude the improper opinion.

22 He has given an opinion upon which there is no  
23 factual foundation.

24 So, on multiple levels I don't think it should  
25 be permitted. In addition, if that is the only purpose of

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1 Mr. Kosier coming in to testify, then we have eliminated  
2 another witness in a time-sensitive case.

3 I will leave my other arguments for my  
4 co-counsel on the issue of solicitation in the pre-poly  
5 interview.

6 With respect to the other rulings, with respect  
7 to Fuhrman, I would ask for an opportunity because there  
8 is so much overlapping on these rulings with my  
9 co-counsel. They are not here. And I'm sure they wish to  
10 articulate specific objections. So, rather than do it in  
11 piecemeal we would like a brief opportunity to address  
12 that with the Court on Friday.

13 THE COURT: You want to give your objections  
14 again?

15 MR. GRANDINETTE: I would like to be able to  
16 permit -- I don't know every objection my co-counsel would  
17 gave.

18 THE COURT: Then they can give their objections  
19 and I can rule on them at that point. But at this point I  
20 don't see any reason to preclude John French, Debra Smith,  
21 Kim Beyer Kruse, or Virginia Fuhrman. And I will wait on  
22 Detective Anthony Kosier.

23 But there have been a number of things said  
24 during the questioning of Mr. Restivo that did come in and  
25 did not say anything about polygraph.

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1           So, I will examine that when Mr. Scheck or  
2           Ms. Cornwall appear.

3           MR. GRANDINETTE: Okay.

4           I have great concern about the propensity issue,  
5           and this is the Kim Beyer and Virginia Fuhrman testimony  
6           with respect to that argument.

7           Irrespective of whether or not the testimony  
8           they seek to elicit is not probative probable cause,  
9           again, it is at best probative of a collateral issue. And  
10          when you weigh that against the propensity argument which  
11          they have been trying to elicit -- and it has been  
12          acknowledged by Mr. Ferguson directly to the Court in a  
13          conference -- that, yes, that is part of the plan here, to  
14          solicit testimony with respect to attacking the character  
15          of specifically Mr. Halstead. And now they are trying to  
16          also suggest with respect to Mr. Kogut, that somehow  
17          because he may have associated with a young girl he  
18          therefore transforms into a rapist and murderer.

19          If that is the probative basis for which they  
20          seek to admit it, I think it is extremely prejudicial and  
21          of no probative value on whether or not on November 10th,  
22          1984, John Kogut was present and involved with this crime.

23          He has acknowledged a relationship with one of  
24          the witnesses, Kim Beyer, and that is not in dispute.  
25          That was covered in some of the motion in limines in great

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1 length. And the Court ruled on that. And my  
2 understanding was that the Court precluded that testimony.

3 But I would like an opportunity, Judge, to  
4 address it briefly after I speak to co-counsel and we are  
5 in a position --

6 THE COURT: I don't want to hear it again. That  
7 is my point, Mr. Grandinette.

8 MR. GRANDINETTE: I don't blame you.

9 THE COURT: I heard it over and over and over  
10 again. When I make a ruling I make a ruling. I don't  
11 want to hear it ten more times.

12 MR. GRANDINETTE: They are not here.

13 THE COURT: I will listen to them, but I'm done  
14 with your argument.

15 MR. GRANDINETTE: I will sit down.

16 THE COURT: All right.

17 MR. SCHECK: Judge, on this point, the Neufeld  
18 firm submitted a letter, and it is their motion.

19 THE COURT: Right.

20 MR. FREEMAN: I think that the record is clear  
21 from their motion what their issues are.

22 THE COURT: Yes.

23 MR. FREEMAN: And I think --

24 THE COURT: I don't think I have to hear much  
25 more argument on it tomorrow or Friday.

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1 MR. FREEMAN: With respect to housekeeping,  
2 logistics and communication, I'm not sure how we will be  
3 able to communicate tomorrow, unless Mr. Grandinette is  
4 going to be in the neighborhood.

5 THE COURT: Well, tomorrow we are not meeting.

6 The next thing we are going to do, you all are  
7 going to give us your cell phone numbers, and then make  
8 sure you are close by, and we are hopeful that our phones  
9 will get up and be working. I don't know when that is  
10 going to be, and not very hopeful as to the land line  
11 coverage here.

12 Emails appear to be working. It is slow. But  
13 you should email Mr. Baran, and we are hopeful that that  
14 will assist everyone in contacting you all.

15 MR. FREEMAN: We have supplied phone numbers to  
16 Mr. Baran.

17 THE CLERK: Yes.

18 MR. FREEMAN: Cell phone numbers.

19 Our office is without power.

20 THE COURT: You don't have phones either?

21 MR. FREEMAN: I don't think so. I haven't  
22 really tried. I know we don't have power for computers.

23 THE COURT: Mr. Ferguson, how about you? You  
24 have a cell phone?

25 MR. FERGUSON: I have a cell phone. I don't get



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1 any reception in my home. I leave the house, go down the  
2 street, everything I can do, but I don't get reception.  
3 If I do get some, it just cuts off.

4 THE COURT: And that is consistent whether you  
5 are here or at your home?

6 MR. FERGUSON: I'm talking about mostly at my  
7 home.

8 THE COURT: And how about your office? Have you  
9 been there?

10 MR. FERGUSON: I was in my office yesterday.

11 THE COURT: Do you have phone coverage there?

12 MR. FERGUSON: Yes, I do.

13 THE COURT: But not cell phone coverage?

14 MR. FERGUSON: I have land line coverage at my  
15 office.

16 THE COURT: All right.

17 MR. FREEMAN: I will make it my responsibility  
18 of notifying Mr. Ferguson. We will find a way.

19 THE COURT: Good.

20 I assume that Ginsberg's closing was not  
21 accomplished?

22 MR. FREEMAN: Not only was it not accomplished,  
23 but the banks -- I don't know if you had any experience  
24 with what is going on these days with loans, but the bank  
25 wants to inspect the building that he is buying into,

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1 post-storm.

2 THE COURT: Wouldn't you?

3 MR. FREEMAN: I don't know. But we may have to  
4 evaluate his competence. Let's put it that way.

5 THE COURT: Tomorrow, let's shoot for no later  
6 than 3:00 o'clock in getting that information to you.

7 MR. FREEMAN: Sounds good.

8 THE COURT: Okay.

9 That is about it.

10 MR. FREEMAN: We are anticipating we will be  
11 here on Friday, but just not positive.

12 THE COURT: Hopeful. Extremely hopeful.

13 I have an emergency application after you folks  
14 clear out.

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17 (Proceedings adjourned until 9:30 o'clock,  
18 Friday, October 2, 2012.).)

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